



DEPARTMENTS OF THE ARMY AND THE AIR FORCE

NATIONAL GUARD BUREAU  
1411 JEFFERSON DAVIS HIGHWAY  
ARLINGTON, VA 22202-3231

NGB-EO (690-700)

31 Jul 00

MEMORANDUM FOR Adjutants General of All States, Puerto Rico, Guam,  
The U.S. Virgin Islands, and the Commanding General  
of the District of Columbia

SUBJECT: (All States Log Number P00-0045) National Guard Bureau Equal  
Opportunity (NGB-EO) Alternative Dispute Resolution (ADR)

1. The National Guard is expanding the use of Alternative Dispute Resolution in the Equal Opportunity area through the enclosed guidance, the ***"National Guard Bureau, Equal Opportunity ADR Program Plan (NGB-EO ADRPP)"***. The enclosed NGB-EO ADRPP is for immediate implementation nationwide. The ADRPP is designed to capitalize on a proven successful program, with the goal of providing a voluntary, flexible, and mutually acceptable method of resolving disputes. I strongly encourage each manager, commander, and employee to participate in ADR and take advantage of the opportunity to resolve complaints, grievances, and most workplace disputes quickly and cost effectively. I recommend that you maximize the use of the enclosed NGB-EO ADRPP within your organization. As an example of the merits of ADR, the use of mediation (the most widely used method of ADR) in Guard matters has achieved a 98% resolution rate.
2. The NGB-EO ADRPP is designed for use as a supplement, not a replacement for the traditional/formal grievance and complaint procedures. Any one or more of the following methods may be utilized as a component of the NGB-EO ADR Program: early neutral evaluation; conciliation; facilitation; mediation; fact-finding; settlement negotiations; and ombudsmanship. Information regarding the use/implementation of these ADR methods is enclosed.
3. The Administrative Dispute Resolution Act of 1996 and 29 CFR §1614 mandate that each Agency implement an ADR Program. Other NGB programs (such as Human Resources and Contracts) also use ADR and NGB intends to memorialize those programs and efforts in the near future. We also expect to develop over this next year an NGB ADR regulation to set up a general framework for furthering ADR use within NGB and the Guard.


NGB-EO

SUBJECT: (All States Log Number P00-P00-0045) National Guard Bureau Equal Opportunity (NGB-EO) Alternative Dispute Resolution (ADR)

4. This guidance is effective immediately and remains in effect for one year from this date or until it is included into the revisions of NGR (AR) 690-600/NGR (AF) 40-1614 and NGR (AR) 600-22/NGR (AF) 30-3, whichever is sooner. This memorandum supersedes All States Log No. P97-0006, subject: DRP and Mediation in EEO . Complaints.

5. Point of contact is LTC Glendora Thomas, DSN 327-0773.

Encl  
as



RUSSELL C. DAVIS  
Lieutenant General, USAF  
Chief, National Guard Bureau

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# **NATIONAL GUARD BUREAU**

## **EQUAL OPPORTUNITY ALTERNATIVE DISPUTE RESOLUTION PROGRAM PLAN**

**August 2000**

### **NGB POLICY STATEMENT**

The National Guard Bureau, Equal Opportunity Directorate Alternative Dispute Resolution Program Plan (NGB-EO ADRPP) establishes and implements policy and program procedures for encouraging the expanded use of ADR for Army and Air Force personnel. This policy is applicable to Title 32 Active Guard Reserve (AGR), Title 32 Traditional Guardsmen, and Title 32 technicians. This plan is designed pursuant to statutory requirements in the Administrative Dispute Resolution Act, Public Law 104-320 (October 19, 1996), Executive Order 12988 ADR Provisions of the National Performance Review (a) and (b), 29 CFR 1614, DOD Directive 5145.5 April 22, 1996, NGR (AR) 690-600/NGR (AF) 40-1614, AR 15-6, AFD 51-12 and NGB-EO All States Letter (P00-P00-0045). NGB is committed to ADR and strongly endorses the use of various mechanisms that would serve to expedite resolution of disputes in the workplace.

The NGB-EO ADRPP is designed to supplement, not limit or replace the formal grievance and complaint procedures already established within the National Guard. Informal voluntary procedures used in the NGB-EO ADRPP include, but are not limited to, settlement negotiation conferences, fact-finding, mediation, ombudsman, conciliation, facilitation, and early neutral evaluation. Participation in ADR is voluntary and may be initiated prior to the filing of a formal complaint, through the command level or through the traditional administrative processes, as well as after the complaint goes formal. ADR can be a valuable tool to resolve Equal Employment Opportunity (EEO) and Military (EO) complaints, grievances, appeals, and other unresolved disputes in the workplace.

The Chief of the National Guard strongly encourages the use of one or more ADR methods to be used alone or in combination, for parties seeking to resolve their disputes. Resolution attempts may be considered throughout the process up to the point that a decision is made.

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## EQUAL OPPORTUNITY ALTERNATIVE DISPUTE RESOLUTION PROGRAM PLAN

### A. PURPOSE:

The primary purpose of the NGB-EO Alternative Dispute Resolution Program Plan is to provide quick and inexpensive mechanisms to resolve disputes, which are an alternative to tedious time-consuming formal adjudication and litigation. ADR utilizes informal methods that remove the adversarial climate of the grievance and complaint process, reduces the cost of litigating claims in terms of resources (e.g. people, money and time), improves management and employee relationships and thereby improves the overall work environment.

### B. RESPONSIBILITIES:

*The Chief of the National Guard* is committed to improving the confidence, readiness and morale of the work force by increasing ADR awareness, promoting the accessibility and willingness of all personnel to participate in the NGB-EO ADRPP.

*The Chief Counsel* is the agency-designated ADR Representative responsible for oversight, review, and monitoring the overall Agency-wide ADR Reports and data to ensure consistency with DOD components, program effectiveness and legal sufficiency in the use of ADR throughout the National Guard. The Chief Counsel provides legal counsel and technical ADR expertise for the NGB Alternative Dispute Resolution Program.

*The Adjutants General* of each state are required to implement the NGB-EO ADRPP fully throughout the state ensuring that ADRPP receives the widest distribution and promotion to all applicable personnel, as identified above. States may modify and revise the NGB-EO ADRPP to enhance or broaden the use of ADR. Any deviations from the NGB-EO ADRPP must be reviewed and approved by the NGB-EO prior to implementation to ensure compliance with all ADR statutory requirements, DOD, Army, Air Force and NGB regulations.

*The Directorate for Equal Opportunity* is responsible for the design and implementation of the NGB-EO nationwide ADR Program. The NGB-EO directs, reviews, and manages design, implementation and evaluation of the ADR Program providing policy, regulatory and procedural guidance, for both Army and Air Force military and civilian personnel throughout 54 states and territories.

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## EQUAL OPPORTUNITY ALTERNATIVE DISPUTE RESOLUTION PROGRAM PLAN

NGB-EO assists in providing ADR training, mediation and facilitation services, and promotes the use of ADR throughout the Guard.

**NG Commanders, managers and unit supervisors** should make every effort to participate fully in ADR and forge a clear path towards the goal of working together to resolve conflicts in an expedient and fair manner.

**The State Equal Employment Manager (SEEM)** is the proponent in the state for the NGB-EO ADR Program management, administration, implementation and evaluation. The SEEM will submit an Annual State ADRP Report to NGB-EO NLT 15 Oct of each year.

**Employees** are encouraged to utilize the ADRPP to resolve workplace disputes fairly, and quickly.

### C. NGB-EO ADRPP PROGRAM REQUIREMENTS

- NGB, Defense Equal Opportunity Management Institute, and States will provide a wide range of ADR training of various types and sources for Commanders, Managers, Supervisors, Employees, Mediators, Facilitators, Third Party Neutrals (TPNs), SEEMS, HRO Staff, Equal Opportunity Advisors, EEO Counselors, and Special Emphasis Program Managers to educate and inform the workplace on ADR methods and procedures.
- Conduct ADR briefings, courses, workshops and skills training to enhance and improve the techniques and proficiency of ADR Third Party Neutrals.
- Provide a cadre of trained and certified NGB Third Party Neutrals.
- Advertise and promote the use of ADR nationwide.
- The State ADR Representative (ADRR)/State Equal Employment Manager (SEEM) will collect ADR data, and administer the state-level ADRPP and determine the effectiveness by reviewing and analyzing the implementation of the ADR Program throughout the state. The ADRR/SEEM will also complete an Annual ADR Report assessing trends, causes, types, and costs associated with workplace disputes. The NGB-EO will monitor, review and evaluate

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nationwide implementation and effectiveness of the overall NGB-EO ADRP and make appropriate modifications or changes as necessary.

### D. ADR METHODS

**"Alternative Dispute Resolution"** (ADR) is a generic name for a continuum of processes and approaches designed to resolve disputes in a manner that is quick, flexible, and cost effective. ADR avoids the cost, delay and unpredictability of the traditional adjudicative **"WIN-LOSE"** scenario where both parties lose control of the outcome to a third party Senior Commander or judge. ADR seeks to achieve a **"WIN-WIN"** resolution of the dispute and empowers the disputing parties to formulate a mutually agreeable resolution while maintaining management and employee rights and entitlements. The ADR process is a non-adversarial process which allows both parties to participate in conflict management in an environment that is conducive to mutual respect, consideration of others and mission accomplishment. One or more of the following ADR methods may be used to resolve disputes.

- **Early Neutral Evaluation-** A neutral third party provides non-binding evaluation or assessment of the dispute orally or in writing. The third party neutral provides the disputing parties an objective perspective on the strengths and weakness of their cases. Under this method the parties will usually make informal presentations to the neutral to highlight each party's case or position.

Early neutral evaluation is appropriate when the dispute involves technical or factual issues that lend themselves to expert evaluation. It is also used when the parties disagree significantly about the value of their cases and when the top decision-makers of one or more of the parties could be better informed about the real strengths and weaknesses of their cases. Finally, it is used when the parties are seeking an alternative to the expensive and time-consuming process of following discovery procedures.

- **Conciliation-** Involves establishing communications and building a positive relationship between the parties to a dispute. To help build or improve relationships, the parties may use a third party or Conciliator (who may or may not be totally neutral to the interests of the parties). A Conciliator (i.e., EEO Counselor, Equal Opportunity Assistant, Military Equal Opportunity Officer (MEO), ADR Representative, Special Emphasis Program Manager (SEPM), Key

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Management Official, Union Representative, Human Rights Officer) may assist parties by helping to establish communication, clarifying misperceptions, dealing with strong emotions, and building the trust necessary for cooperative problem-solving. The conciliation method is often used in conjunction with other methods such as facilitation or mediation.

- **Facilitation-** Involves the use of techniques to improve the flow of information in a meeting or group situation. The facilitator guides discussions, monitors and records the comments, suggestions, or results of brainstorming sessions, and process action teams, in an orderly and productive manner. The facilitator generally works with all the parties in a group setting, and provides directions as to how the group can efficiently move through the problem-solving steps of the meeting and arrive at a jointly agreed upon resolution. Facilitators focus on procedural assistance and remain impartial to the topics or issues under discussion.

The method of facilitating is most appropriate (1) when the intensity of the parties' emotions about the issues in dispute are low to moderate, (2) the parties or issues are not extremely polarized, (3) the parties have enough trust in each other that they can work together to develop a mutually acceptable solution, or (4) the parties are in a common predicament and they need or will benefit from a jointly acceptable outcome.

- **Fact-Finding-** Involves the use of an impartial expert or group (ADR Representative or third party neutral) selected by the parties, an agency, or by an individual with the authority to appoint a fact-finder in order to determine what the "facts" are in a dispute. The rationale behind the efficiency of fact-finding is the expectation that the opinion of a trusted and impartial neutral will carry weight with the parties. Fact-Finding was originally used in the attempt to resolve labor disputes, but variations of the procedure have been applied to a wide variety of problems in other areas as well.

Fact-finders do not resolve or decide policy issues. The fact-finder may be authorized only to conduct an inquiry or evaluate the matter presented and file a report establishing the facts. In some cases, he or she may be authorized to issue either a situation assessment or a specific non-binding procedural or substantive recommendation as to how a dispute might be resolved. In cases where such recommendations are not accepted, the data (or facts) have been

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collected and organized in a fashion that will facilitate further negotiations or be available as part of the case record for use in later traditional or administrative procedures.

- **Mediation-** The objective of this intervention is to assist the parties to voluntarily reach a mutually acceptable resolution of issues in dispute. The mediator is an impartial and neutral third party, who has no decision-making authority. Mediation is useful in highly polarized disputes where the parties have either been unable to initiate productive dialogue, or in cases where the parties have been talking and have reached a seemingly insurmountable impasse.

A mediator, like a facilitator, makes primarily procedural suggestions regarding how parties can reach agreement. Occasionally, a mediator may suggest some substantive options as a means of encouraging the parties to expand the range of possible resolutions under consideration. A mediator often works with the parties individually, and in caucuses, to explore acceptable resolution options or to develop proposals that might move the parties closer to resolution.

Mediators may differ in their degree of directness or control of the process depending upon the parties involved, the complexity of the issues, and the subject-matter expertise required. Mediators perform the role of the catalyst that enables the parties to present their cases in an orderly fashion, defuses tensions and emotions in a non-adversarial environment allowing the parties to communicate in a non-threatening manner which is conducive to a free exchange of information and ideas. The mediators assist the parties in identifying the issues and guides the process utilizing interest-based bargaining techniques rather than positional-adversarial bargaining techniques. The objective is a "win/win" scenario which allows the parties to pursue common goals, interests and possible solutions while avoiding the pitfalls of positional bargaining which often results in impasses where neither party "wins". The mediator sets the procedural ground rules for the proceedings to ensure a balance of power, mutual respect, and integrity of the process.

- **Settlement Negotiation Conference-** Involves a meeting between the opposing parties and/or their representatives in order to reach a mutually acceptable settlement of the matter in dispute. This method is generally mandated prior to use of the judicial system (i.e., prior to the courts, EEOC or MSPB hearing a case). In this proceeding there is no judge or individual who



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will render a decision. Resolution of the dispute rests with the parties involved. The disputing parties apply interest based problem-solving techniques to reach a mutual settlement agreement that would resolve the dispute. The key to success in utilizing a Settlement Negotiation Conference is the ability of both parties to come to the table in a good-faith effort and demonstrate their willingness to explore possible alternative solutions. Each party represented must have the authority to make a decision or commitment on their behalf that would be binding if a settlement agreement were reached. The process separates the person from the problem, explores all interests to define issues clearly, brainstorms possibilities and opportunities, and uses some mutually agreed upon standard to reach a solution. Trust in the process and the willingness of each party to work towards resolution is essential for success.

- **Ombudsman-** An Ombudsman may have varying degrees of authority ranging from providing advisory services and recommendations to parties regarding employment disputes, to actually making the final decision in the matter of dispute. This service involves informal discussions regarding employee rights, benefits and entitlements; and employer rights, authority and requirements.
- **Other-** Other ADR methods and procedures may be utilized as deemed appropriate by the NGB-EO Alternative Dispute Resolution Manager. Other methods that may be utilized in specific cases may be Peer Review Panels, Mini-trials and non-binding arbitration.

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### D. PROCEDURES:

#### Alternative Dispute Resolution Procedural Steps

DAY	STEP	PROCESS
0	1	Aggrieved party makes initial contact with Management, an EEO Counselor, EOA, MEO, SEEM, HRO, IG, ADR POC etc.
2-4	2	State ADR POC emails or faxes a completed ADR Request Form with signatures of disputants agreeing to participate in good-faith to NGB-EO to determine feasibility of ADR.
4-10	3	NGB-EO selects the appropriate ADR method and appoints a Mediator or Third Party Neutral (TPN).
10-12	4	Mediator or Third Party Neutral initiates contact with both parties to coordinate the ADR session(s).
12-28	5	ADR process is conducted.
28-30	6	If <b>partial or full resolution</b> is reached, a Settlement Agreement is formulated and coordinated with appropriate state officials (HRO, SJA, SEEM, EOA, MEO, IG, and NGB-EO) before each disputant, and the TPN signs the agreement. Each participant will complete a Client or Mediator Evaluation Form and the TPN will forward forms to the SEEM and NGB-EO.
30	7	If <b>no resolution</b> , a Memorandum for Record will be written stating simply that a resolution attempt was made, the date(s), the participants and that no resolution/agreement was reached. Each participant will complete a Client or Mediator Evaluation Form and the TPN will forward forms to the SEEM and NGB-EO. If <b>partial agreement or no resolution</b> is reached, forward the remaining issues in dispute through the appropriate established traditional informal or formal administrative complaint or grievance process (i.e., EEO/EO, HRO IG).

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### **F. EVALUATION AND ASSESSMENT MEASUREMENT:**

The NGB-EO ADR Program will be reviewed annually to assess program effectiveness. The overall program policy, procedures and regulatory guidance will be reviewed to evaluate the appropriateness and applicability to the National Guard. The ADRR/SEEM will assess the state's EO ADR Program to determine program improvements, significant trends, and problem areas requiring corrective action and overall need for modification and update. The ADRR/SEEM will complete and submit an **"EO ADR Program Summary" along with the "NGB-EO State Annual ADR Report,"** as of 30 September, to NGB-EO, Suite 9200, 1411 Jefferson Davis Highway, Arlington, VA 22202-3231, **NLT 15 October each year**. Follow-up Client Reports will be completed by each participant of ADR to determine the satisfaction level of the resolutions reached and the process used for each instance where ADR was used. For further information or assistance regarding this matter, please NGB-EO, Suite 9200, 1411 Jefferson Davis Highway, Arlington, VA 22202-3231, or call DSN 327-0764, commercial (703) 607-0764, fax DSN 327-0789, commercial (703) 607-0789.

#### **6 Attachments**

NGB Mediator and Facilitator Profile Form

NGB Standards of Conduct for Mediators

Request for ADR and Agreement to Participate in Good Faith

Client Evaluation Form

Mediator Evaluation Form

NGB-EO State Annual ADR Report Form

**NATIONAL GUARD BUREAU - EO  
ALTERNATIVE DISPUTE RESOLUTION PROGRAM (ADRP)**

**MEDIATOR AND FACILITATOR PROFILE**

**INSTRUCTIONS:** Please complete this form and submit to the National Guard Bureau, Directorate for Equal Opportunity, Suite 9200, Jefferson Plaza One, 1411 Jefferson Davis Highway, Arlington, VA 22202-3231, or fax the form to (703) 607-0790/DSN 327-0790, **for review and certification as an NGB-EO Mediator and/or Facilitator.** If you have any questions please phone (703) 607-0764/DSN 327-0764.

1. Name: \_\_\_\_\_
2. Position Title: \_\_\_\_\_
3. Grade/Rank/Series: \_\_\_\_\_ 4. State: \_\_\_\_\_ 5. Email Address: \_\_\_\_\_
6. Name of Organization: \_\_\_\_\_

7. Address: \_\_\_\_\_ 8. Phone Numbers: \_\_\_\_\_
- \_\_\_\_\_ DSN: \_\_\_\_\_
- \_\_\_\_\_ Com: \_\_\_\_\_
- \_\_\_\_\_ Fax: \_\_\_\_\_

9. List of all Mediation/Facilitation Training, Education and Certification:  
(List chronologically, beginning with most recent. Use additional sheet if necessary.)

<u>Date</u>	<u>Course Name</u>	<u>Training Source</u>	<u>#Hrs/Days</u>
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10. Mediator/Facilitator Experience: (List Total # of Cases for each area and types of issue(s) involved.)

Total Cases Facilitator \_\_\_\_\_ Total Cases Co-Mediator \_\_\_\_\_ Total Cases Sole Mediator \_\_\_\_\_

#Cases

Issue(s)

_____ Personnel	_____
_____ Grievances/Appeals	_____
_____ Contract Dispute	_____
_____ EEO	_____
_____ Sex/Sexual Harassment	_____

\_\_\_\_ Team Building \_\_\_\_\_  
\_\_\_\_ Other Specify \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

11. Relevant Dispute Resolution Experience: (e.g., as an attorney, instructor, EEO investigator, counselor, or SEP Mgr., grievance examiner, union official or steward, personnelist, conciliator, ombudsman, arbitrator, negotiator, ADR panel member)

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

12. Additional skills, credentials, or professional affiliation. (e.g., foreign language, sign language, special expertise, membership in SPIDR, NIDR, AAA, )

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

13. Known limitations on your availability (e.g. days unavailable, travel limitations, conflicts-of-interest <sup>1</sup>).

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

14. Supervisor's Name: \_\_\_\_\_ 15. Supervisor Telephone: \_\_\_\_\_

**PRIVACY ACT STATEMENT:**

The information you provide is voluntary and will be reviewed for approval and certification as an NGB Mediator/Facilitator. Failure to provide requested information would result in the individual's non-certification. Upon certification, your name will be included in the NGB Mediator and Facilitator Listing and database maintained by NGB-EO. Information from this form will be used to review and select individuals based upon training, experience and evaluation of effectiveness of mediation and or facilitation skills. The profiles will be provided upon request to disputants, their representatives and agency officials seeking mediation, facilitation or other ADR assistance.

**Attachments:**

1. Individual and Supervisory Verification and Endorsement
2. Standards of Conduct for NGB-EO Mediators

<sup>1</sup> **NOTE:** A Third Party Neutral **must**:

- a. Ensure that there is no actual or perceived conflicts-of-interests or bias towards either party; **and**
- b. **Can not** be in the military or civilian chain-of-command within the State/Organization.

# NATIONAL GUARD BUREAU - EO ALTERNATIVE DISPUTE RESOLUTION PROGRAM

## INDIVIDUAL AND SUPERVISORY VERIFICATION FORM

### APPLICANT MEDIATION VERIFICATION

The information provided in this form is true and complete to the best of my knowledge and recollection. I will update this information annually to ensure that the data accurately reflects my qualifications and availability to mediate cases. I agree to participate fully in the NGB EO Alternative Dispute Resolution Program (ADRP), and comply with applicable ADR statute, policy and regulations, as specified in the *ADR Act of Oct 19, 1996; 5USC §571, 572, 573, and 581; 29 CFR 1614; DOD Directive 5145.5 Apr 22, 1996; and NGR (AR) 600-22/NGR (AF) 40-1614, (AR) 600-22/NGR (AF) 30-3, and AFD 50-12*. I have read the attached Society of Professionals in Dispute Resolution document entitled "Ethical Standards of Professional Responsibility" and agree to abide by these standards if I am certified to act as an NGB Mediator.

\_\_\_\_\_  
Signature of Applicant

\_\_\_\_\_  
Date

### APPLICANT FACILITATION VERIFICATION

The information provided in this form is true and complete to the best of my knowledge and recollection. I will update this information annually to ensure that the data accurately reflects my qualifications and availability as a facilitator. I agree to participate fully in the NGB EO Alternative Dispute Resolution Program (ADRP) and comply with applicable ADRP statute and policy as specified in the *ADR Act of Oct 19, 1996; 5USC §571, 572, 573, and 581; 29 CFR 1614; DOD Directive 5145.5 Apr 22, 1996*. I understand that serving as a Facilitator is a collateral duty assignment and no fees are authorized for such services.

\_\_\_\_\_  
Signature of Applicant

\_\_\_\_\_  
Date

### SUPERVISORY ENDORSEMENT

As workload permits, I agree to allow \_\_\_\_\_ to serve as a mediator and/or facilitator if called upon to do so by National Guard Bureau. I have reviewed the training certificates and other documents which verify that the information submitted is accurate and complete. Based upon my knowledge of the temperament and inter-personal skills, I believe this person has the ability and potential to perform effectively as a **Mediator** \_\_\_\_\_ **Facilitator** \_\_\_\_\_. My concurrence in no way limits my ability to schedule or assign this employee's work. I further understand that when serving as a mediator or facilitator, the individual is performing collateral duties and no compensation is associated with such services under this agreement other than covering any travel and per diem expenses incurred while performing such duties. Any Travel, per diem or other costs related to the mediation will be paid by the requesting organization.

\_\_\_\_\_  
Supervisor Signature

\_\_\_\_\_  
Date

# **NATIONAL GUARD BUREAU - EO ALTERNATIVE DISPUTE RESOLUTION PROGRAM**



## **STANDARDS OF CONDUCT FOR MEDIATORS**

Approved and Adopted by

**The American Arbitration Association**

**The Society of Professionals in Dispute Resolution**

**The American Bar Association**

Patricia A. Williams, ADRP Manager  
NGB Directorate for Equal Opportunity, Suite 9212  
1411 Jefferson Davis Hwy, Arlington, VA 22202-3231

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# **STANDARDS OF CONDUCT FOR MEDIATORS**

*"The Model Standards of Conduct for Mediators"* have been approved by the American Arbitration Association, the Litigation Section and the Dispute Resolution Section of the American Bar Association, and the Society of Professionals in Dispute Resolution.

## **Introductory Note**

The initiative for these standards came from three professional groups: The American Arbitration Association (AAA), the American Bar Association (ABA), and the Society of Professionals in Dispute Resolution (SPIDR).

The purpose of this initiative is to develop a set of standards to serve as a general framework for the practice of mediation. The effort is a step in the development of the field and a tool to assist practitioners in it -- a beginning, not an end. The model standards are intended to apply to all types of mediation. It is recognized, however, that in some cases the application of these standards may be affected by laws or contractual agreements.

## **Preface**

The model standards of conduct for mediators are intended to perform three major functions: to serve as a guide for the conduct of mediators; to inform the mediating parties; and to promote public confidence in mediation as a process for resolving disputes. The standards draw on existing codes of conduct for mediators and take into account issues and problems that have surfaced in mediation practice. They are offered in the hope that they will serve an educational function and provide assistance to individuals, organizations, and institutions involved in mediation.

### **I. Self-Determination: A Mediator Shall Recognize that Mediation is Based on the Principle of Self-Determination by the Parties.**

Self-determination is the fundamental principle of mediation. It requires that the mediation process rely upon the ability of the parties to reach a voluntary, uncoerced agreement. Any party may withdraw from mediation at any time.

### **COMMENTS:**

- The mediator may provide information about the process, raise issues, and help parties explore options. The primary role of the mediator is to facilitate a voluntary resolution of a dispute. Parties shall be given the opportunity to consider all proposed options.
- A mediator cannot personally ensure that each party has made a fully informed choice to reach a particular agreement, but it is a good practice for the mediator to make the parties aware of the

*"The Standards of Conduct For Mediators"* is a model guide for NGB Mediators to use in conjunction with the ADR Act of 1996; E. O. 12988, E. O. 12871, 5 USC § 571 through § 581; 29 CFR §1614; DOD Directive 5145.5; and NGB EO AD RP policy and regulations NGR (AR) 600-22/NGR (AF) 40-1614.



## **STANDARDS OF CONDUCT FOR MEDIATORS**

importance of consulting other professionals, where appropriate, to help them make informed decisions.

### **II. Impartiality: A Mediator Shall Conduct the Mediation in an Impartial Manner.**

The concept of mediator impartiality is central to the mediation process. A mediator shall mediate only those matters in which she or he can remain impartial and evenhanded. If at any time the mediator is unable to conduct the process in an impartial manner, the mediator is obligated to withdraw.

#### **COMMENTS:**

- A mediator shall avoid conduct that gives the appearance of partiality toward one of the parties. The quality of the mediation process is enhanced when the parties have confidence in the impartiality of the mediator. When mediators are appointed by a court or institution, the appointing agency shall make reasonable efforts to ensure that mediators serve impartially.
- A mediator should guard against partiality or prejudice based on the parties' personal characteristics, background or performance at the mediation.

### **III. Conflicts of Interest: A Mediator shall Disclose all Actual and Potential Conflicts of Interest Reasonably Known to the Mediator. After Disclosure, the Mediator shall Decline to Mediate unless all Parties Choose to Retain the Mediator. The Need to Protect Against Conflicts of Interest also Governs Conduct that Occurs During and After the Mediation.**

A conflict of interest is a dealing or relationship that might create an impression of possible bias. The basic approach to questions of conflict of interest is consistent with the concept of self-determination. The mediator has a responsibility to disclose all actual and potential conflicts that are reasonably known to the mediator and could reasonably be seen as raising a question about impartiality. If all parties agree to mediate after being informed of conflicts, the mediator may proceed with the mediation. If, however, the conflict of interest casts serious doubt on the integrity of the process, the mediator shall decline to proceed.

A mediator must avoid the appearance of conflict of interest both during and after the mediation. Without the consent of all parties, a mediator shall not subsequently establish a professional relationship with one of the parties in a related matter, or in an unrelated matter under circumstances which would raise legitimate questions about the integrity of the mediation process.

#### **COMMENTS:**

- A mediator shall avoid conflicts of interest in recommending the services of other professionals. A mediator may make reference to professional referral services or associations, which maintain rosters of qualified professionals.

## **STANDARDS OF CONDUCT FOR MEDIATORS**

- Potential conflicts of interest may arise between administrators of mediation programs and mediators and there may be strong pressures on the mediator to settle a particular case or cases. The mediator's commitment must be to the parties and the process. Pressure from outside of the mediation process should never influence the mediator to coerce parties to settle.

### **IV. Competence: A Mediator shall Mediate Only When the Mediator has the Necessary Qualifications to Satisfy the Reasonable Expectations of the Parties.**

Any person may be selected as a mediator, provided that the parties are satisfied with the mediator's qualifications. Training and experience in mediation, however, are often necessary for effective mediation. A person who offers herself or himself as available to serve as a mediator gives parties and the public the expectation that she or he has the competency to mediate effectively. In court-connected or other forms of mandated mediation, it is essential that mediators assigned to the parties have the requisite training and experience.

#### **COMMENTS:**

- Mediators should have information available for the parties regarding their relevant training, education and experience.
- The requirements for appearing on the list of mediators must be made public and available to interested persons.
- When mediators are appointed by a court or institution, the appointing agency shall make reasonable efforts to ensure that each mediator is qualified for the particular mediation.

### **V. Confidentiality: A Mediator Shall Maintain the Reasonable Expectations of the Parties with Regard to Confidentiality.**

The reasonable expectations of the parties with regard to confidentiality shall be met by the mediator. The parties' expectations of confidentiality depend on the circumstances of the mediation and any agreements they may make. The mediator shall not disclose any matter that a party expects to be confidential unless given permission by all parties or unless required by law or other public policy.

#### **COMMENTS:**

- The parties may make their own rules with respect to confidentiality, or other accepted practice of an individual mediator or institution may dictate a particular set of expectations. Since the parties' expectations regarding confidentiality are important, the mediator should discuss these expectations with the parties.

## **STANDARDS OF CONDUCT FOR MEDIATORS**

- If the mediator holds private sessions with a party, the nature of these sessions with regard to confidentiality should be discussed prior to undertaking such sessions.
- In order to protect the integrity of the mediation, a mediator should avoid communicating information about how the parties acted in the mediation process, the merits of the case, or settlement offers. The mediator may report, if required, whether parties appeared at a scheduled mediation.
- Where the parties have agreed that all or a portion of the information disclosed during a mediation is confidential, the parties' agreement should be respected by the mediator.
- Confidentiality should not be construed to limit or prohibit the effective monitoring, research or evaluation of mediation programs by responsible persons. Under appropriate circumstances, researchers may be permitted to obtain access to the statistical data and, with the permission of the parties, to individual case files, observations of live mediations and interviews with participants.

### **VI. Quality of the Process: A Mediator Shall Conduct the Mediation Fairly, Diligently, and in a Manner Consistent with the Principle of Self-Determination by the Parties.**

A mediator shall work to ensure a quality process and to encourage mutual respect among the parties. A quality process requires a commitment by the mediator to diligence and procedural fairness. There should be adequate opportunity for each party in the mediation to participate in the discussions. The parties decide when and under what conditions they will reach an agreement or terminate mediation.

### **COMMENTS:**

- A mediator may agree to mediate only when he or she is prepared to commit the attention essential to an effective mediation.
- Mediators should only accept cases when they can satisfy the reasonable expectations of the parties concerning the timing of the process. A mediator should not allow a mediation to be unduly delayed by the parties or their representatives.
- The presence or absence of persons at mediation depends on the agreement of the parties and the mediator. The parties and mediator may agree that others may be excluded from particular sessions or from the entire mediation process.
- The primary purpose of a mediator is to facilitate the parties' voluntary agreement. This role differs substantially from other professional-client relationships. Mixing the role of a mediator and the role of a professional advising a client is problematic, and mediators must strive to distinguish between the roles. A mediator should, therefore, refrain from providing professional advice. Where appropriate, a mediator should recommend that parties seek outside professional advice, or consider

*"The Standards of Conduct For Mediators"* is a model guide for NGB Mediators to use in conjunction with the ADR Act of 1996; E. O. 12988, E. O. 12871, 5 USC § 571 through § 581; 29 CFR §1614; DOD Directive 5145.5; and NGB EO ADRP policy and regulations NGR (AR) 600-22/NGR (AF) 40-1614.

## **STANDARDS OF CONDUCT FOR MEDIATORS**

resolving their dispute through arbitration, counseling, neutral evaluation, or other processes. A mediator, who undertakes, at the request of the parties, an additional dispute resolution role in the same matter assumes increased responsibilities and obligations that may be governed by the standards of other processes.

- A mediator shall withdraw from mediation when incapable of serving or when unable to remain impartial.
- A mediator shall withdraw from mediation, or postpone a session if the mediation is being used to further illegal conduct, or if a party is unable to participate due to drug, alcohol, or other physical or mental incapacity.
- Mediators should not permit their behavior in the mediation process to be guided by a desire for a high settlement rate.

**VII. Advertising and Solicitation: A Mediator shall be Truthful in Advertising and Solicitation for Mediation.** Advertising or any other communication with the public concerning services offered or regarding the education, training, and expertise of the mediator shall be truthful. Mediators shall refrain from promises and guarantees of results.

### **COMMENTS:**

- It is imperative that communication with the public educates and instills confidence in the process.
- In an advertisement or other communication to the public, a mediator may make reference to meeting state, national, or private organization qualifications only if the entity referred to has a procedure for qualifying mediators and the mediator has been duly granted the requisite status.

**VIII. Fees: A Mediator shall fully Disclose and Explain the Basis of Compensation, Fees, and Charges to the Parties.**

The parties should be provided sufficient information about fees at the outset of a mediation to determine if they wish to retain the services of a mediator. If a mediator charges fees, the fees shall be reasonable, considering among other things, the mediation service, the type and complexity of the matter, the expertise of the mediator, the time required, and the rates customary in the community. The better practice in reaching an understanding about fees is to set down the arrangements in a written agreement.

### **COMMENTS:**

- A mediator, who withdraws from mediation, should return any unearned fee to the parties.

## **STANDARDS OF CONDUCT FOR MEDIATORS**

- A mediator should not enter into a fee agreement, which is contingent upon the result of the mediation or amount of the settlement.
- Co-mediators who share a fee should hold to standards of reasonableness in determining the allocation of fees.
- A mediator should not accept a fee for referral of a matter to another mediator or to any other person.

## **STANDARDS OF CONDUCT FOR MEDIATORS**

### **IX. Obligations to the Mediation Process: Mediators have a Duty to Improve the Practice of Mediation.**

#### **COMMENT:**

- Mediators are regarded as knowledgeable in the process of mediation. They have an obligation to use their knowledge to help educate the public about mediation; to make mediation accessible to those who would like to use it; to correct abuses; and to improve their professional skills and abilities.

**REQUEST FOR ADR / MEDIATION  
AND  
AGREEMENT TO PARTICIPATE IN GOOD FAITH**

**INSTRUCTIONS:** This form must be completed by parties requesting and agreeing to mediation; and the local Point-of-Contact responsible for coordinating the necessary administrative arrangements on behalf of the parties seeking mediation. Submit this completed form with the appropriate signatures to: National Guard Bureau, Directorate for Equal Opportunity, Suite 9200, Jefferson Plaza One, 1411 Jefferson Davis Highway, Arlington, VA 22202-3231, or fax the document to (703) 607-0790/DSN 327-0790. If you have questions or comments please phone, NGB-EO at (703) 607-0764/DSN 327-0764 .

**PART I. ADR/MEDIATION REQUEST (To be completed by SEEM or State POC)**

1. Date of Request/Referral: \_\_\_\_\_
2. State and Organization: \_\_\_\_\_ -
3. Case No. (if applicable): \_\_\_\_\_ 4. POC Name: \_\_\_\_\_
5. Telephone # Commercial: \_\_\_\_\_ DSN: \_\_\_\_\_ FAX: \_\_\_\_\_
6. Mailing Address: \_\_\_\_\_
7. Proposed Date(s) when the parties are available for mediation. Please allow for 1 or 2 day duration and list dates in order of preference when both parties would like mediation to take place.  
  
1<sup>st</sup> Choice \_\_\_\_\_ 2<sup>nd</sup> Choice \_\_\_\_\_ 3<sup>rd</sup> Choice \_\_\_\_\_
8. Location where the mediation will be held (Room No. Building, Street Address, etc.). If special arrangements to gain access to building or security clearance is required, please specify.  
\_\_\_\_\_  
\_\_\_\_\_
9. Is specialized knowledge or experience needed to mediate this Case? Yes \_\_\_\_ No \_\_\_\_  
If yes, specify. \_\_\_\_\_
10. If a party to this dispute is in a bargaining unit, has his/her exclusive representative been informed, and does the union concur with the intent to mediate? Yes \_\_\_\_ No \_\_\_\_ If no, please explain  
\_\_\_\_\_  
\_\_\_\_\_
11. Would you like a copy of the Mediator/TPN Profile data? \_\_\_\_ Yes \_\_\_\_ No.
12. If a Mediator/TPN is unavailable in the local commuting area, it is understood that this will entail paying ADR/Mediation Cost (i.e., travel and per diem cost). \_\_\_\_ Yes, I agree to pay travel expenses.  
\_\_\_\_ No, If a local mediator is not available, I do not agree to mediate this case.

## PART II PARTIES TO ADR/MEDIATION

### 13. ADR/Mediation Client/1<sup>st</sup> Party:

Name & Title: \_\_\_\_\_  
Organization Address: \_\_\_\_\_  
Telephone Commercial: \_\_\_\_\_ DSN: \_\_\_\_\_ FAX: \_\_\_\_\_

### 14. ADR/Mediation Client/2<sup>nd</sup> Party, Management Representative:

Name & Title: \_\_\_\_\_  
Organization Address: \_\_\_\_\_  
Telephone Commercial: \_\_\_\_\_ DSN: \_\_\_\_\_ FAX: \_\_\_\_\_

### 15. Client/1<sup>st</sup> Party's Representative/Other:

Name & Title: \_\_\_\_\_  
Address: \_\_\_\_\_  
Telephone No.: Commercial: \_\_\_\_\_ FAX: \_\_\_\_\_

16. Briefly summarize the dispute which you wish to resolve. \_\_\_\_\_

17. Have there been any prior attempts to resolve this case through informal third party methods, such as mediation or facilitation? If yes, please explain. \_\_\_\_\_

## PART II AGREEMENT TO PARTICIPATE IN GOOD FAITH

I agree to enter into this mediation process in good faith. I will sincerely attempt to resolve this dispute, agree to cooperate with the Mediator/TPN assigned to this case, and give serious consideration to all suggestions made in regard to developing a realistic solution to the problem(s).

I understand that the Mediator/TPN assigned to this case will not be serving as an advocate, attorney, or judge. The mediator's sole function is to act as a neutral third party. Any agreements or decisions resulting from this mediation session are entered into voluntarily and by mutual acceptance of the parties.

I recognize that ADR/Mediation is an attempt to settle disputes between the participating parties. I understand and agree mediation discussions will be kept confidential and the parties agree to maintain confidentiality with regard to any matters discussed during the mediation process, with the exception that binds the mediator's responsibility to report instances of fraud, waste, abuse, criminal activity, behavior and harm to persons. Disclosure and release of information is bound by the agreement to confidentiality except as bound by law or to authorized persons requiring terms of the agreement to implement the terms of said agreement. I agree that the mediator may not be called as a witness to the proceedings of the mediation process.

I also understand that I may not subpoena or attempt to require the mediator in this case to testify or produce records, notes, or a work product in any future proceedings and that no recordings or stenographic records will be made of the mediation session.

I realize that ADR/Mediation is an open-end process and agree to make myself available for the total designated time allocated to give the process fair opportunity to succeed. I understand the normal mediation process may require 1-2 days for completion.

I understand that no party shall be bound by anything done through mediation unless a written settlement is reached and executed by the parties. If a settlement is reached, this agreement is binding and shall be reduced to writing and, when signed and approved by the appropriate authorities for all parties.

\_\_\_\_\_  
ADR/Mediation Client/ 1<sup>st</sup> Party's Signature

\_\_\_\_\_  
Date

\_\_\_\_\_  
Telephone #

\_\_\_\_\_  
ADR/Mediation Client/ 2<sup>nd</sup> Management Rep Signature

\_\_\_\_\_  
Date

\_\_\_\_\_  
Telephone #



## CLIENT EVALUATION FORM

**INSTRUCTIONS:** Please fill out this form upon completion of mediation. Local reproduction of this form is authorized so that each participant [client(s), agency official(s) or other representative(s)] has a form to complete. Please mail completed forms to National Guard Bureau, Directorate of Equal Opportunity, Suite 9200, 1411 Jefferson Davis Highway, Arlington, VA 22202-3231, call DSN 327-0764 or fax forms to (703) 607-0790 or DSN 327-0790.

1. Name & Title: \_\_\_\_\_

2. State, Organization & Address: \_\_\_\_\_

3. Date(s) of Mediation: \_\_\_\_\_ 4. Name of Mediator: \_\_\_\_\_

**5. Case Results:**

Settled \_\_\_\_\_ Partial Settlement \_\_\_\_\_ Not Settled \_\_\_\_\_

6. If the case was not settled, why do you believe this happened? \_\_\_\_\_

7. Would you use ADR again? \_\_\_\_\_ Yes \_\_\_\_\_ No. If no, please explain. \_\_\_\_\_

8. Would you recommend this Mediator/Third Party Neutral in the future? \_\_\_\_\_ Yes \_\_\_\_\_ No.

If not, explain. \_\_\_\_\_

9. Any other comments? \_\_\_\_\_

**Please circle the most accurate response:**

	<b>Very Satisfied</b>	<b>Satisfied</b>	<b>Neutral or Not Applicable</b>	<b>Dissatisfied</b>	<b>Very Dissatisfied</b>
Time Savings	5	4	3	2	1
Money Savings	5	4	3	2	1
Effectiveness of the Neutral	5	4	3	2	1
Impact on relationship of disputing parties	5	4	3	2	1
Outcome of the Case	5	4	3	2	1

## MEDIATOR OR THIRD PARTY NEUTRAL EVALUATION FORM

**INSTRUCTIONS:** Please complete this form upon closing your case. Mail the completed form and a copy of the Settlement Agreement, if one was made to National Guard Bureau, Directorate of Equal Opportunity, JP 1 Suite 9200, 1411 Jefferson Davis Highway, Arlington, VA 22202-3231, or fax the form and/or Settlement Agreement to (703) 607-0790 or DSN 327-0790. You may call NGB-EO at (703) 607-0764/DSN 327-0764.

1. State and Organization that requested assistance: \_\_\_\_\_

2. Name of Parties that participated in ADR/Mediation \_\_\_\_\_

3. Date and Location of Mediation: \_\_\_\_\_

4. Type of Dispute: \_\_\_\_\_

5. Outcome:

Settled \_\_\_\_\_ Partial Settlement \_\_\_\_\_ Not Settled \_\_\_\_\_

6. No. hours spent mediating \_\_\_\_\_ 7. Travel & Per Diem Cost \$ \_\_\_\_\_ 8. Total Cost \$ \_\_\_\_\_

9. Other Cost (please specify type and amount i.e. attorney fees, compensatory damages):

10. If case was not settled, please indicate why you believe this occurred. \_\_\_\_\_

11. Was ADR or Mediation appropriate for this case? Yes \_\_\_\_\_ No \_\_\_\_\_

12. If not, why not? \_\_\_\_\_

13. Other Comments: \_\_\_\_\_

\_\_\_\_\_  
Mediator Signature

\_\_\_\_\_  
Telephone

**(STATE) National Guard**  
**FY \_\_\_\_ Annual Equal Opportunity Alternative Dispute Resolution Report**

**INSTRUCTIONS:** This form is to be completed annually NLT: 15 October, reflecting data from 01 October of the previous year to 30 September of the current year; and submitted to the National Guard Bureau, Directorate of Equal Opportunity, Suite 9200, 1411 Jefferson Davis Highway, Arlington, VA 22202-3231, or fax reports to DSN 327-0789 or (703) 607-0789.

	ARNG Army (AR) ADR Event	ARNG Air (AF) ADR Event	Number Resolved	Number Not Resolved	No. ADR Events by Source of Neutral	Comp Cost	Travel & Per Diem Cost	Total Cost
Conciliation								
Early Neutral Evaluation								
Facilitation								
Mediation								
Fact Finding								
Settlement Conference								
Ombudsman								
Other Specify								
Number of ADR Events by Source of Neutral								
<b>TOTALS</b>								

**\* LEGEND: ADR SOURCE OF NEUTRAL**

NGB-National Guard Bureau  
DOD-Non-NGB Department of Defense  
PC-Private Sector – Contract

**EXAMPLE:**    NGB    10  
                      DOD    5  
                      PC     8

\_\_\_\_\_  
**NAME (SEEM/ADR REP)**

\_\_\_\_\_  
**TITLE**

\_\_\_\_\_  
**DATE**

# NATIONAL GUARD BUREAU - EO

## Alternative Dispute Resolution Process Chart

